Senate Committee On

COMPREHENSIVE PLANNING

Steven A. Geller, Chair
Daniel Webster, Vice Chair

Meeting Packet

Tuesday, April 20, 2004
9:15 a.m. – 11:15 a.m.
412 Knott Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON COMPREHENSIVE PLANNING

Senator Geller, CHAIR
Senator Webster, VICE-CHAIR

DATE: Tuesday, April 20, 2004
TIME: 9:15 a.m. -- 11:15 a.m.
PLACE: The *Pat Thomas Committee Room,* 412 Knott Building

(MEMBERS: Senators Argenziano, Bennett, Bullard, Campbell, Constantine and Posey)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 2702 Atwater (Compare H 1361)	Ad Valorem Tax Levies/Counties; prohibits ad valorem tax levies by counties in excess of amounts specified in county charter; prohibits ad valorem tax levies by counties through municipal service taxing units in excess of amounts specified in ordinance establishing unit. Amends 200.071. CP 04/16/04 Not considered CP 04/20/04 FT	
2	A proposed committee substitute combining the following two bills: (SB 2362 and SB 3072 will be considered).		
3	SB 2362 Geller	Annexation; expresses legislative intent to revise laws re annexation. ***(A proposed committee substitute is expected to be filed prior to the amendment deadline.)*** CP 04/16/04 Not considered CP 04/20/04 GO ATD AP RC	
4	SB 3072 Constantine (Compare S 0452)	Interlocal Svc. Boundary Agreement; creates "Interlocal Service Boundary Agreement Act"; provides for creation of said agreements by county & one or more municipalities or special districts; authorizes municipality to provide services within unincorporated area or territory of another municipality; provides for effect of agreements adopted under act; requires notice by municipality before commencing annexation procedures, etc. Creates & amends Ch. 171. ***(A proposed committee substitute is expected to be filed prior to the amendment deadline.)*** JU 04/12/04 FAVORABLE CP 04/16/04 Not considered CP 04/20/04	

E X P A N D E D A G E N D A

COMMITTEE ON COMPREHENSIVE PLANNING

DATE: Tuesday, April 20, 2004 **TIME: 9:15 a.m. -- 11:15 a.m.**

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 1652 Wise (Compare H 1113) IF RECEIVED	Department of State; authorizes nonstandard internal structuring of Department of State; reorganizes department; provides for assistant Secretary of State & deputy secretaries of state; deletes existing divisions of department & creates offices as internal subdivisions & provides their responsibilities; amends provisions to conform; provides definitions applicable to public libraries & state archives, etc. Amends FS. GO 04/13/04 Not considered GO 04/19/04 CP 04/20/04 If received EE NR ATD AP	

1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2702

SPONSOR: Senator Atwater

SUBJECT: Ad Valorem Tax Levies / Counties

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper DMC	Yeatman	CP	
2.			FT	
3.				
4.				
5.				
6.				

I. Summary:

This bill restricts the county property tax millage rate to the rate specified in a county charter. Likewise, the millage rate county governments may impose on property within a Municipal Service Taxing Unit (MSTU) is restricted to the millage rate specified in the ordinance establishing the MSTU.

This change will allow the electorate to establish property tax millage rate limitations in their county charters, which have been ruled to be inconsistent with Florida Law, and to limit millage rates imposed within MSTUs to those rates specified in the ordinance establishing the MSTU.

This bill amends s. 200.071, of the Florida Statutes.

II. Present Situation:

Property Taxation

Ad valorem taxes or "property taxes" are a major source of revenue for county governments in Florida. In FY 2000-01 (the last year for which fiscal information is available) property taxes constituted 39 percent of county governmental revenue ($5.2 billion).[1]

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.[2] However, the property tax is not an unlimited source of revenue. The Florida Constitution grants property tax

[1] Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database @ http://fcn.state.fl.us/lcir/dataAtoZ.html.

[2] Article VII, Section 1 of the State Constitution.

relief in the form of valuation differentials, assessment limitations, and exemptions, which includes homestead exemptions.

In addition, the State Constitution caps the millage rates assessed against the value of the property.[3] For counties, municipalities, and school districts, the cap is 10 mills.
Section 200.071, F.S., in part, implements the constitutional millage cap for counties. Subsection (1) provides that except as otherwise provided, counties may not levy more than 10 mills, except for voted levies, against real property and tangible personal property in their jurisdictions. Furthermore, subsection (3) restricts counties from levying more than 10 mills through a municipal service taxing unit (MSTU) against real property and tangible personal property within each such municipal service taxing unit.

MSTUs
Section 125.01(1)(q), F.S., authorizes counties to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided

> fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.

This paragraph further provides that if ad valorem taxes are levied, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units may not exceed 10 mills.

Charter Counties
The Florida Constitution provides that the state be divided by law into political subdivisions called counties.[4] There are two general types of counties in Florida: charter and non-charter. Non-charter counties have home-rule powers as provided by general or special law, and may enact ordinances that are not inconsistent with general or special law.[5] Charter counties have all powers of local government not inconsistent with general law or with special law approved by vote of the electors.[6] This 'special law' constitutes a local charter, or a "local constitution" that defines the structure, powers and functions of county government. This charter may only be approved, amended or repealed by the county electorate. Approximately 80 percent of all Floridians live in one of the state's 19 charter counties.[7]

---

[3] See Article VII, Section 9 of the State Constitution. A mill is defined as 1/1000 of a dollar, or $1 per $1000 of table value.
[4] Article VIII, s. 1(a) of the State Constitution. Ch. 7, F.S., specifies the physical boundaries of the 67 counties in Florida.
[5] Article VIII, s. 1(f) of the State Constitution.
[6] Article VIII, ss. 1(c) and (g) of the State Constitution.
[7] Which are: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia Counties.

Recent Efforts to Cap Local Budgets

Numerous past local efforts to establish some type of millage rate or budget cap in county charters have been struck down by the courts as unconstitutional.

- In *Board of County Commissioners of Dade County v. Wilson*, [8] the Florida Supreme Court found that ch. 200, F.S., set forth the exclusive manner by which to set countywide millage rates. The Court held that a proposed voter initiative to set a county millage rate at four mills for Dade County for the 1980-1981 was unconstitutional.

- In *Board of County Commissioners of Marion County v. McKeever*,[9] the Fifth District Court of Appeals found that chapters 129 and 200, F.S., contemplated the annual preparation and adoption of the budget and the setting of millage rates by a county commission. This Court struck down a Marion County ordinance that purported to establish a cap of .25 mills of ad valorem tax for the county transportation fund for a period of ten years.

- In *Charlotte County Board of County Commissioners v. Taylor*,[10] the Second District Court of Appeals found unconstitutional a voter approved amendment to the County's charter to limit the Commission's authority to adopt any millage rate which would result in more than a 3% increase in the total revenue generated over the total ad valorem taxes for the previous year. In so finding, the Court noted the charter amendment was inconsistent with the provisions of chapters 129 and 200, F.S. The Court struck down the charter amendment noting that Art. VIII, s. 1(g), State Constitution, provides that the counties operating under county charters shall have all the powers of local self-government not inconsistent with general.

- Attorney General Opinion 2001-04 opined to the Hillsborough County Board of County Commissioners that a county could not amend its charter to place a cap on the annual increase in the county's operating budget with the provision that the cap may be waived by an affirmative vote of at least six of the seven members of the board of county commissioners.

- Recently, in *Ellis v. Burk*, [11] the Fifth District Court of Appeals struck down a tax cap provision of the Brevard County Home Rule Charter. The provision prohibited the County from increasing its ad valorem tax revenue in any one year by more than the lesser of 3% or the percentage change of the Consumer Price Index for the previous year, over the previous year's ad valorem revenues without the approval of a majority of the voters at a general or special election. In the decision, the Court stated that "[u]nder our state constitution and statutory scheme, the power to limit a county commission's ability to raise revenue for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the [L]egislature."

[8] 386 So.2d 556 (Fla. 1980).
[9] 436 So.2d 299 (Fla. 5th DCA 1983).
[10] 650 So.2d 146 (Fla. 2d DCA 1995).
[11] 29 Fla. L. Weekly D195 (Jan. 9, 2004)

III. Effect of Proposed Changes:

Section 1 amends s. 200.071, F.S. to restrict the property tax millage rate county governments may impose to the rate specified in a county charter. Likewise, the millage rate county governments may impose on property by a MSTU is restricted to the millage rate specified in the ordinance establishing the MSTU.

This change will allow the electorate to establish property tax limitations in their county charters, which have been ruled to be inconsistent with Florida Law.

Section 2 provides that the bill will take effect January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill allows county charters to be amended to restrict the millage rates county governments may impose on property for property tax purposes. In addition, it allows similar restrictions be imposed by ordinance for MSTUs.

B. Private Sector Impact:

If the electorate chooses to amend their county charter to restrict the millage rates county governments may impose for property tax purposes, property owners will not be subject to millage rate increases above the rate established in the charter.

Likewise, property owners in areas subject to MSTU property taxes will not be subject to millage rate increases above the rate set in the ordinance which established in the MSTU.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. SB 2702

Amendment No. 1

020160

CHAMBER ACTION

Senate | House

COMPREHENSIVE PLANNING
DATE: 4-15-04
TIME: 9:15 A.M.

Senator Posey moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause,

and insert:

Section 1. Subsections (1) and (3) of section 200.071, Florida Statutes, are amended to read:

200.071 Limitation of millage; counties.--

(1)(a) Except as otherwise provided herein, no ad valorem tax millage shall be levied against real property and tangible personal property by counties in excess of 10 mills or the amount specified in the county charter, whichever is less, except for voted levies.

(b) A county may cap, through a provision in its charter, the annual growth in ad valorem tax revenues. Any such cap may not restrict the annual growth at a rate below the lesser of 3 percent or the Consumer Price Index as defined in s. 193.155(1)(b). Any such cap specified in a county charter must allow for the cap to be overcome by a finding of necessity due to emergency or critical need by a

super-majority vote of the county commission. In applying the increase or growth cap, the county shall compute a millage rate which, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. It is the rate that shall be subject to any cap in growth or increase or ad valorem revenues established by county charter. In preparing their respective budgets for submittal to the county commission, and notwithstanding any other provision of law, constitutional and charter officers are required to comply with any cap in growth established by county charter when submitting their respective budgets to the county commission.

(3) Any county which, through a municipal service taxing unit, provides services or facilities of the kind or type commonly provided by municipalities, may levy, in addition to the millages otherwise provided in this section, against real property and tangible personal property within each such municipal service taxing unit an ad valorem tax millage not in excess of 10 mills, or the amount specified in the ordinance establishing the municipal service taxing unit, whichever is less, to pay for such services or facilities provided with the funds obtained through such levy within such municipal service taxing unit.

Section 2. This act shall take effect January 1, 2005.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause,

and insert:

A bill to be entitled

An act relating to property taxes; amending s. 200.071, F.S.; authorizing counties to cap annual growth in ad valorem tax revenues by charter; providing requirements and limitations; providing an exception; prohibiting ad valorem tax levies by counties in excess of amounts specified in the county charter; prohibiting ad valorem tax levies by counties through municipal service taxing units in excess of amounts specified in the ordinance establishing the unit; providing an effective date.

2

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: PCS for SB 2362 and SB 3072

SPONSOR: Committee on Comprehensive Planning

SUBJECT: Annexation

DATE: April 14, 2004 REVISED: 04/19/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	
2.			GO	
3.			ATD	
4.			AP	
5.			RC	
6.				

I. Summary:

The proposed committee substitute (CS) creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, reduce the number of enclaves, and resolve which local government is responsible for providing services and facilities to unincorporated areas. The negotiating parties, however, are not required to reach an agreement.

The CS also provides a citizen petition initiative process for certain enclaves. If the local governments are unable to reach an agreement on the annexation of an enclave that used the citizen petition process, the Division of Administrative Hearings will appoint an arbitrator and hold arbitration hearings. A recommendation by the arbitrator that results in a municipality agreeing to annex the enclave requires that a majority of the registered voters in the enclave approve the annexation. In addition this CS revises certain notice requirements for annexation under part I of ch. 171, F.S.

This CS creates part II of chapter 171, Florida Statutes, consisting of sections 171.20-171.23, and also creates section 171.094 and amends ss. 171.0413 and 171.042 of the Florida Statutes.

II. Present Situation:

The "Municipal Annexation or Contraction Act", ch. 171, F.S., codifies the State's annexation procedures and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be

provided.[1] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[2]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annex area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation may also be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

Annexation Procedures

Chapter 171, F.S., is intended to provide for efficient service delivery and to limit annexation to urban service areas. Florida's annexation policy attempts to accomplish these goals through restrictions aimed at preventing irregular municipal boundaries. Four parties to any annexation include the state, the municipality that is annexing the property, those property owners who remain in the unincorporated area along with the local government that represents them, and finally those property owners in the area that is the subject of the annexation. Current annexation procedures provide the most process for landowners in the proposed annex area.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[3] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminus with the municipality's boundary.[4] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket, or fingers in serpentine patterns.[5]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipalities' Future Land Use Map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[6] In the interim, a city must apply county regulations or wait to apply its own rules.

As far as revenues are concerned, the effective date of the annexation determines who receives funds. The county share of revenue sharing and the half-cent sales tax will be reduced, effective July 1 if a parcel is annexed prior to April 1. Should the annexation occur before a city levies millage, the annexed property is subject to the city millage, but excluded from the MSTU. If a county has not levied its non-ad valorem assessments before annexation, the county loses those

[1] S. 171.021, F.S.
[2] Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, Oct. 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[3] Ss. 171.0413-.043, F.S.
[4] S. 171.031(11), F.S.
[5] S. 171.031(12), F.S.
[6] 1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs, No. 4D01-2320 (Fla. 4th DCA Aug. 28, 2002).

assessments. This structure for revenues does not allow for any transition period for local governments financially impacted by a recent annexation.

Article VIII, section (2)(c) of the State Constitution provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal agreement, voluntary annexation, or involuntary annexation. First, annexation may be accomplished by a special act of the Legislature pursuant to Article VIII, section (2)(c) of the State Constitution. Annexation through a special act must meet the notice and referendum requirements of Article III, section 10 of the State Constitution applicable to all special acts.

Cities may annex enclaves by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves can also be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum. In a similar process, s. 163.3171, F.S., allows for a joint planning agreement between a municipality and county to allow annexation of unincorporated areas adjacent to a municipality.

Section 171.044, F.S., provides the procedures for a voluntary annexation which occurs when 100 percent of the landowners in an area proposed to be annexed petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[7] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[8]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. A majority of the property owners must consent when more than 70 percent of the property in a proposed annex area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed as well as adopt an ordinance allowing for the annexation and meet certain notice requirements. The urban services report does not have to provide a lot of detail.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of 4 years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property.

[7] S. 171.044(4), F.S.
[8] *See id.*

Following the 4 years and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

III. Effect of Proposed Changes:

Section 1 of the CS creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, reduce the number of enclaves, and resolve which local government is responsible for providing services and facilities to unincorporated areas. This CS is intended to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments. The negotiating parties, however, are not required to reach an agreement.

Section 171.202, F.S., contains definitions for part II of ch. 171, F.S. It defines an "interlocal service boundary agreement" as an agreement between a county and one or more municipalities which addresses certain issues , as required by part II, and which may include one or more independent special districts.

Section 171.203, F.S., authorizes the governing body of a county and one or more municipalities or independent special districts to enter into an interlocal service boundary agreement (interlocal agreement). The county and municipality may develop a process for reaching an interlocal agreement that meets certain requirements or use the process provided in this section.

The process outlined in s. 171.203, F.S., provides that the negotiations for an interlocal agreement are initiated when a county or municipality adopts a resolution inviting at least one other local government to enter into negotiations. The initiating resolution must identify an unincorporated area or incorporated area, or both, and the issues to be negotiated as part of the interlocal agreement. Copies of the initiating resolution must be provided to every invited municipality, each other municipality in the county, and each independent special district in the unincorporated area identified in the resolution. Within 60 days of receipt of an initiating resolution, the county or municipality must adopt a responding resolution. This responding resolution may identify additional unincorporated area, incorporated area, or issues for negotiation and it may also invite additional municipalities to negotiate. A municipality within the county that is not invited may request participation in the negotiations within a prescribed time frame and the county and invited municipality must consider this request.

After the parties to the negotiations have been determined through the adoption of various resolutions, the county, invited municipalities, participating municipalities, if any, and the independent special districts if they elect to participate, shall begin negotiations within 60 days after receipt of a responding or participating resolution, whichever occurs first. An invited municipality that does not adopt a responding resolution is deemed to have waived its right to participate and is bound by an interlocal agreement that results from the negotiations. Local governments are authorized to simultaneously negotiate more than one interlocal agreement. If the local governments successfully negotiate an interlocal agreement, they must adopt the

agreement by ordinance and an independent special district that is a party must adopt the agreement using a method consistent with its charter.

The issues that may be addressed by an interlocal agreement may include, but are not limited to, the identification of a municipal service area and unincorporated service area. It may also include the identification of the local government responsible for the delivery or funding of the following services within those areas: public safety; fire and emergency rescue; water and wastewater; road ownership, construction, and maintenance; parks and recreation; and stormwater management and drainage. Additionally, the interlocal agreement may establish a process for land-use decisions consistent with part II of ch. 163, F.S., and allowing a municipality to adopt land-use changes for areas that are scheduled to be annexed within the term of the interlocal agreement consistent with part II of ch. 163, F.S. It provides for an exemption to the twice-per-year limitation on the frequency of plan amendments. The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation from one local government to another, and provide for the joint use of facilities and collocation of services. An interlocal agreement may be for a term of 20 years or less and must include a provision requiring periodic review with renegotiations to begin at least 18 months prior to its termination date.

Each local government that is a party to the interlocal agreement is required to amend the intergovernmental cooperation element of its comprehensive plan no later than 6 months following entry of the agreement consistent with s. 163.3177(6)(h)1., F.S. For purposes of challenging such plan amendment, an affected person includes persons owning real property, residing, or owning or operating a business within the boundaries of the municipal service area and owners of real property abutting real property within the municipal service area that is the subject of the plan amendment in addition to those affected persons who would have standing under s. 163.3184.

If after six months after negotiations have commenced an interlocal service boundary agreement has not been reached, the initiating or invited local governments may declare an impasse in the negotiations. The party declaring an impasse may seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. If the local governments cannot agree at the conclusion of the dispute resolution process under ch. 164, F.S., the CS requires the local governments to hold a joint public hearing on the issues raised in the negotiations. Further, for a period of 6 months following the failure of the local governments to reach an agreement, the initiating local government may not initiate negotiations to require the responding local government to negotiate the same issues with respect to the same unincorporated areas. In addition, the CS specifies that a county or municipality may not enter into an interlocal agreement or other agreement that infringes upon the service area of a private provider or that may impair or affect the franchise rights of such provider without the consent of the provider.

Sections 171.204 and 171.205, F.S., provide procedures under which land identified in interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171. F.S. Specifically, the CS authorizes a municipality to annex land that: is not contiguous to the municipality; is not urban in character; creates an enclave; and is not compact.

Land within a municipal service area, as identified in the interlocal agreement, may be annexed by the municipality using a process for annexation consistent with part I of ch. 171, F.S., or using a flexible process that includes one or more of the following: the filing of a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation, the filing of a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation, or upon the approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation.

The CS allows the annexation of enclaves consisting of 20 acres or more within a designated municipal service area using a flexible process for securing voter consent, as provided in the interlocal agreement, which may include the annexation of such property with a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. For enclaves, consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area, those enclaves may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal agreement, or which may include a referendum of the registered voters who reside in the area proposed to be annexed.

Section 171.206, F.S., provides that an interlocal agreement is binding on the parties. Section 171.207, F.S., provides that part II of ch. 171, F.S., is an alternative provision allowing for the transfer of power resulting from the interlocal agreement as authorized by s. 4, Art. VIII of the State Constitution. Section 171.208, F.S., authorizes a municipality to exercise extraterritorial powers, including the authority to provide services and facilities within the unincorporated area as provided for in the interlocal agreement. Similarly, s. 171.209, F.S., authorizes a county to provide services and facilities within a municipality according to the terms of the interlocal agreement. Section 171.21, F.S., provides for the effect of an interlocal agreement on a county charter. Section 171.211, F.S., provides that an interlocal agreement is presumed valid and binding and places the burden of proving the agreement's invalidity on the challenger. Section 171.212, F.S., requires local governments to use ch. 164, F.S., to resolve disputes regarding the construction and effect of an interlocal agreement under this part. If the procedures in ch. 164, F.S., do not result in resolution of the conflict, a local government may file an action in circuit court not later than 30 days following the conclusion of those procedures.

Finally, s. 171.213, F.S., provides a citizen petition initiative process for enclaves that have been identified in a requesting or responding resolution. This petition process does not apply to any municipality having a population of 7,500 or fewer as of January 1, 2003, unless approved by a majority of its governing body. Also, it does not apply to a municipality having a population greater than 7,500 as of January 1, 2003, if the proposed area to be annexed will increase the municipal population by more than 10 percent unless approved by the majority of it s governing body. A municipality that is petitioned on two or more occasions may not increase the municipal population by more than 20 percent in any given year or 50 percent in a 5-year period. Such a petition may be initiated no sooner than 270 days after the joint public hearing required by this part. Under this section, the registered voters or the property owners of the area may initiate this process by notifying the municipality of one of the following:

- They have obtained consent of 50 percent or more of the registered voters in the enclave;
- They have obtained the consent of 50 percent of the property owners within the enclave;

- The board of directors of a condominium association, as defined in s. 718.103(2), F.S., or a homeowners' association, as defined in s. 720.301(7), F.S., has approved a resolution that has also been approved by a majority of the members of the association.

It provides procedures for collecting signatures on a petition. Not later than 60 days after certification of the petition, a municipality must notify the county of its intent to annex the enclave or, if it elects not to annex, notify and invite the county and any independent special district to negotiate. Alternatively, if the municipality does not annex the enclave within 60 days, the registered voters, property owners, condominium association, or homeowners' association may petition the county to initiate the interlocal agreement process for their enclave.

If the participating local governments fail to reach an agreement on annexing the enclave, the local governments may adopt an interlocal dispute resolution agreement or use the process provided in this part which includes an arbitrator appointed by the Division of Administrative Hearings. After considering certain factors, the arbitrator shall:

- Determine whether the enclave should remain unincorporated or be annexed. If the arbitrator finds the enclave should be annexed, the annexation must be approved by a majority of the registered voters that reside in the enclave.
- Determine service delivery responsibilities of the county, municipality, and independent special district.
- Determine fiscal compensation issues, including requiring a single payment or a payment over a term of years to ensure the fiscal responsibilities for providing urban services can be met.

The parties may accept the arbitrator's findings and enter into an agreement based on the award; negotiate and enter into an agreement differing from the award; or file an action rejecting the award, to set aside the award, or enforce it. Subsequent proceedings shall be governed by part III of ch. 684, F.S. It provides rulemaking authority to the Division of Administrative hearings for the arbitration process.

Section 2 amends s. 171.042, F.S., to require that an ordinance notice for annexation be provided to the county where the municipality is located not fewer than 15 days prior to commencing annexation procedures under s. 171.0413, F.S.

Section 3 amends s. 171.044, F.S., to require a municipality to send a copy of the ordinance notice for a voluntary annexation to the county where the municipality is located not fewer than 10 days prior to publishing or posting the notice. Failure to comply with this notice provision may be the basis for an action invalidating the annexation.

Section 4 creates s. 171.094, F.S., to provide that an interlocal agreement entered into pursuant to part II of ch. 171, F.S., is binding on the parties. A party may not take any action that violates the interlocal agreement without the consent of the county or an invited municipality.

Section 5 amends s. 171.081, F.S., to provide a time limit for initiating an appeal on annexation or contraction. The appeal may be initiated within 30 days following passage of the annexation or contraction ordinance or within 30 days following the dispute resolution process provided for

in this section. Under this provision, the dispute resolution process under ch. 164, F.S., is applicable if the party affected is a governmental entity. Such governmental entity must initiate conflict resolution procedures within 30 days following the passage of an annexation or contraction ordinance.

Section 6 amends s. 164.1058, F.S., to provide that a primary disputing governmental entity that fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in the Florida Governmental Conflict Resolution Act, shall be required to pay the attorney's fees and costs for that proceeding.

Section 7 requests the Division of Statutory Revision to designate ss. 171.011-171.094, F.S., as part I of ch. 171, F.S., and ss. 171.20-171.213, F.S., as part II of ch. 171, F.S.

Section 8 provides the CS provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate fiscal impact associated with the CS's requirement that the Division of Administrative Hearings provide an arbitration process for certain disputes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

A bill to be entitled

An act relating to local government; creating part II of ch. 171, F.S.; providing a popular name; providing legislative intent with respect to annexation and the coordination of services by local governments; providing definitions; providing for the creation of interlocal service boundary agreements by a county and one or more municipalities or independent special districts; specifying the procedures for initiating an agreement and responding to a proposal for agreements; identifying issues the agreement may address; requiring local governments that are a party to the agreement to amend their comprehensive plans; specifying those persons who may challenge a plan amendment required by the agreement; requiring that an agreement be adopted by resolution; providing prerequisites to annexation; providing a process for annexation; providing for the effect of an interlocal service boundary area agreement on the parties to the agreement; providing for a transfer of powers; authorizing a municipality to provide services within an unincorporated area or territory of another municipality; authorizing a county to exercise certain powers within a municipality; providing for the effect on interlocal agreements and county charters; providing a presumption of validity; providing a procedure to settle a dispute regarding an interlocal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

service boundary agreement; providing for a citizen petition initiative process; providing for application; providing procedures for annexation of enclaves; providing for dispute resolution agreements; providing responsibilities of an arbitrator; providing rulemaking authority to the Division of Administrative Hearings; amending s. 171.042, F.S.; revising the time period for filing of a report; providing for a cause of action to invalidate an annexation; amending s. 171.044, F.S.; revising the time period for providing a copy of a notice; providing for a cause of action to invalidate an annexation; creating s. 171.094, F.S.; providing for the effect of interlocal service boundary agreements adopted under the act; amending s. 171.081, F.S.; requiring a governmental entity affected by annexation or contraction to initiate conflict resolution procedures under certain circumstances; amending s. 164.1058, F.S.; providing that a governmental entity that fails to participate in conflict resolution procedures shall be required to pay attorney's fees and costs under certain conditions; requesting the Division of Statutory Revision to designate parts I and II of ch. 171, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part II of chapter 171, Florida Statutes, consisting of sections 171.20, 171.201, 171.202, 171.203, 171.204, 171.205, 171.206, 171.207, 171.208, 171.209, 171.21, 171.211, 171.212, and 171.213, is created to read:

171.20 Popular name.--This part may be cited as the "Interlocal Service Boundary Agreement Act."

171.201 Legislative intent.--The Legislature intends to provide an alternative to part I of this chapter for local governments regarding the annexation of territory into a municipality and the subtraction of territory from the unincorporated area of the county. The principal goal of this part is to encourage local governments to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community. This part is intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of annexation impacts. This part is intended to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments. It is the intent of this part to promote sensible boundaries that reduce the costs of local governments, avoid local service duplication, and increase political transparency and accountability. This part is intended to prevent inefficient service delivery and an insufficient tax base to support the delivery of those services.

171.202 Definitions.--As used in this part, the term:

(1) "Chief administrative officer" means the municipal administrator, municipal manager, county manager, county administrator, or other officer of the municipality, county,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

or independent special district who reports directly to the governing body of the local government.

(2) "Enclave" has the same meaning as provided in s. 171.031(13).

(3) "Independent special district" means an independent special district, as defined in s. 189.403, which provides fire, emergency medical, water, wastewater, or stormwater services.

(4) "Initiating county" means a county that commences the process for negotiation of an interlocal service boundary agreement through the adoption of an initiating resolution.

(5) "Initiating local government" means a county or municipality that commences the process for negotiation of an interlocal service boundary agreement through the adoption of an initiating resolution.

(6) "Initiating municipality" means a municipality that commences the process for negotiation of an interlocal service boundary agreement through the adoption of an initiating resolution.

(7) "Initiating resolution" means a resolution adopted by a county or a municipality which commences the process for negotiation of an interlocal service boundary agreement and which identifies the unincorporated area and other issues for discussion.

(8) "Interlocal service boundary agreement" means an agreement adopted under this part, between a county and one or more municipalities, which may include one or more independent special districts as parties to the agreement.

(9) "Invited municipality" means an initiating municipality and any other municipality designated as such in an initiating resolution or a responding resolution that

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

invites the municipality to participate in the negotiation of an interlocal service boundary agreement.

(10) "Municipal service area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement for municipal annexation by a municipality that is a party to the agreement.

(b) An unincorporated area that has been identified in an interlocal service boundary agreement to receive municipal services from a municipality that is a party to the agreement or from the municipality's designee.

(11) "Notified local government" means the county or a municipality, other than an invited municipality, that receives an initiating resolution.

(12) "Participating resolution" means the resolution adopted by the initiating local government and the invited local government.

(13) "Requesting resolution" means the resolution adopted by a municipality seeking to participate in the negotiation of an interlocal service boundary agreement.

(14) "Responding resolution" means the resolution adopted by the county or an invited municipality which responds to the initiating resolution and which may identify an additional unincorporated area or another issue for discussion, or both, and may designate an additional invited municipality.

(15) "Unincorporated service area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement and that may not be annexed without the consent of the county.

(b) An unincorporated area that has been identified in an interlocal service boundary agreement to receive municipal services from a county or its designee.

171.203 Interlocal service boundary agreement.--The governing body of a county and one or more municipalities or independent special districts within the county may enter into an interlocal service boundary agreement under this part. The governing bodies of a county and a municipality may develop a process for reaching an interlocal service boundary agreement which provides for public participation in a manner that meets or exceeds the requirements of subsection (8), or the governing bodies may use the process established in this section.

(1) A county or a municipality desiring to enter into an interlocal service boundary agreement shall commence the negotiation process by adopting an initiating resolution. The initiating resolution shall identify an unincorporated area or incorporated area, or both, to be discussed and the issues to be negotiated. The identified area shall be specified in the initiating resolution by a descriptive exhibit that includes, but need not be limited to, a map or legal description of the designated area. The issues for negotiation shall be listed in the initiating resolution and may include, but need not be limited to, the issues listed in subsection (6).

(a) The initiating resolution of an initiating county must designate one or more invited municipalities. The initiating resolution of an initiating municipality may designate an invited municipality.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(b) An initiating county shall send the initiating resolution by United States certified mail to the chief administrative officer of every invited municipality and each other municipality within the county. An initiating municipality shall send the initiating resolution by United States certified mail to the chief administrative officer of the county, the invited municipality, if any, and each other municipality within the county.

(c) The initiating local government shall also send the initiating resolution to the chief administrative officer of each independent special district in the unincorporated area designated in the initiating resolution.

(2) Within 60 days after the receipt of an initiating resolution, the county or the invited municipality, as appropriate, shall adopt a responding resolution. The responding resolution may identify an additional unincorporated area or incorporated area, or both, for discussion and may designate additional issues for negotiation. The additional identified area, if any, shall be specified in the responding resolution by a descriptive exhibit that includes, but need not be limited to, a map or legal description of the designated area. The additional issues designated for negotiation, if any, shall be listed in the responding resolution and may include, but need not be limited to, the issues listed in subsection (6). The responding resolution may also invite an additional municipality to negotiate the interlocal service boundary agreement.

(a) Within 7 days after the adoption of a responding resolution, the responding county shall send the responding resolution by United States certified mail to the chief

administrative officer of the initiating municipality, each invited municipality, if any, and the independent special district that received an initiating resolution.

(b) Within 7 days after the adoption of a responding resolution, an invited municipality shall send the responding resolution by United States certified mail to the chief administrative officer of the initiating county, each invited municipality, if any, and each independent special district that received an initiating resolution.

(c) An invited municipality that was invited by a responding resolution shall adopt a responding resolution in accordance with paragraph (b).

(d) Within 60 days after receipt of the initiating resolution, any independent special district that received an initiating resolution and that desires to participate in the negotiations shall adopt a resolution indicating whether it intends to participate in the negotiation process for the interlocal service boundary agreement. Within 7 days after the adoption of the resolution, the independent special district shall send the resolution by United States certified mail to the chief administrative officer of the county, the initiating municipality, each invited municipality, if any, and each notified local government.

(3) A municipality within the county that is not an invited municipality may request participation in the negotiations for the interlocal service boundary agreement. Such a request shall be accomplished by adopting a requesting resolution within 60 days after receipt of the initiating resolution or within 10 days after receipt of the responding resolution. Within 7 days after adoption of the requesting resolution, the requesting municipality shall send the

resolution by United States certified mail to the chief administrative officer of the initiating local government and each invited municipality. The county and the invited municipality shall consider whether to allow a requesting municipality to participate in the negotiations, and, if they agree, the county and the municipality shall adopt a participating resolution allowing the requesting municipality to participate in the negotiations.

(4) The county, the invited municipalities, the participating municipalities, if any, and the independent special districts, if any have adopted a resolution to participate, shall begin negotiations within 60 days after receipt of the responding resolution or a participating resolution, whichever occurs later.

(5) An invited municipality that fails to adopt a responding resolution shall be deemed to waive its right to participate in the negotiation process and shall be bound by an interlocal agreement resulting from such negotiation process, if any is reached.

(6) An interlocal service boundary agreement may address any issue concerning service delivery, fiscal responsibilities, or boundary adjustment. The agreement may include, but need not be limited to, provisions that:

(a) Identify a municipal service area.

(b) Identify an unincorporated service area.

(c) Identify the local government responsible for the delivery or funding of the following services within the municipal service area or the unincorporated service area:

1. Public safety.

2. Fire, emergency rescue, and medical.

3. Water and wastewater.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4. Road ownership, construction, and maintenance.

5. Conservation, parks, and recreation.

6. Stormwater management and drainage.

(d) Address other services and infrastructure not currently provided by the private sector.

(e) Establish a process and schedule for annexation of an area within the designated municipal service area consistent with s. 171.205.

(f) Establish a process for land-use decisions consistent with part II of chapter 163, including those made jointly by the governing bodies of the county and the municipality, or allow a municipality to adopt land-use changes consistent with part II of chapter 163 for areas that are scheduled to be annexed within the term of the interlocal agreement, and allow an exemption from the two-per-year limitation applicable to changes to the comprehensive plan under s. 163.3187.

(g) Address other issues concerning service delivery, including the transfer of services and infrastructure and the fiscal compensation to one county or municipality from another county or municipality.

(h) Provide for the joint use of facilities and the colocation of services.

(i) Include a requirement for a report to the county of the municipality's planned service delivery, as provided in s. 171.042, or as otherwise determined by agreement.

(6) Each local government that is a party to the interlocal agreement shall amend the intergovernmental cooperation element of its comprehensive plan, as defined in s. 163.3177(6)(h)1., no later than 6 months following entry of the interlocal agreement consistent with s. 163.3177(6)(h)1.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Plan amendments required by this subsection are exempt from the twice-per-year limitation under s. 163.3187.

(7) An affected person for the purpose of challenging a comprehensive plan amendment required by paragraph (5)(f) includes persons owning real property, residing, or owning or operating a business within the boundaries of the municipal service area and owners of real property abutting real property within the municipal service area that is the subject of the comprehensive plan amendment in addition to those affected persons who would have standing under s. 163.3184.

(8) An interlocal service boundary agreement may be for a term of 20 years or less. The interlocal agreement shall also include a provision requiring periodic review. The interlocal service boundary agreement shall require renegotiations to begin at least 18 months before its termination date.

(9) No earlier than 6 months after the commencement of negotiations, either of the initiating local governments or both, the county, or the invited municipality may declare an impasse in the negotiations and seek a resolution of the issues under ss. 164.1053-164.1057. If the local governments fail to agree at the conclusion of the process under chapter 164, the local governments shall hold a joint public hearing on the issues raised in the negotiations.

(10) When the local governments have reached an interlocal service boundary agreement, the county and the municipality shall adopt the agreement by ordinance under s. 166.041 or s. 125.66, respectively. An independent special district, if it consents to the agreement, shall adopt the agreement by final order, resolution, or other method consistent with its charter. The interlocal service boundary

agreement shall take effect on the day specified in the agreement or, if there is no date, upon adoption by the county or the invited municipality, whichever occurs later.

(11) For a period of 6 months following the failure of the local governments to consent to an interlocal service boundary agreement, the initiating local government may not initiate the negotiation process established in this section to require the responding local government to negotiate an agreement concerning the same identified unincorporated area and the same issues that were specified in the failed initiating resolution.

(12) This part does not authorize one local government to require another local government to enter into an interlocal service boundary agreement. However, when the process for negotiating an interlocal service boundary agreement is initiated, the local governments shall negotiate in good faith to the conclusion of the process established in this section.

(13) This section authorizes local governments to simultaneously engage in negotiating more than one interlocal service boundary agreement, notwithstanding that separate negotiations concern similar or identical unincorporated areas and issues.

(14) Elected local government officials are encouraged to participate actively and directly in the negotiation process for developing an interlocal service boundary agreement.

(15) This part does not impair any existing franchise agreement without the consent of the franchisee.

171.204 Prerequisites to annexation under this part.--The interlocal service boundary agreement may describe

the character of land that may be annexed and may provide that the restrictions on the character of land that may be annexed pursuant to part I are not restrictions on land that may be annexed pursuant to this part. As determined in the interlocal service boundary agreement, any character of land may be annexed, including, but not limited to, an annexation of land not contiguous to the boundaries of the annexing municipality, an annexation that creates an enclave, an annexation where the annexed area is not reasonably compact, or an annexation where the annexed area does not qualify as urban in character under part I. The interlocal service boundary agreement may not allow for annexation of land within a municipality that is not a party to the agreement or of land that is within another county.

171.205 Consent requirements for annexation of land under this part.--Notwithstanding part I, an interlocal service boundary agreement may provide a process for annexation consistent with this section or with part I.

(1) For all or a portion of the area within a designated municipal service area, the interlocal service boundary agreement may provide a flexible process for securing the consent of the registered voters who reside in the area proposed to be annexed, or property owners, or both, for annexation of property within a municipal service area, with notice to the registered voters who reside in the area proposed to be annexed, or property owners, or both, as required in the interlocal service boundary agreement. The interlocal service boundary agreement may not authorize annexation unless the consent requirements of part I are met or the annexation is consented to by one or more of the following:

(a) The municipality has received a petition for annexation from more than 50 percent of the registered voters who reside in the area proposed to be annexed.

(b) The annexation is approved by a majority of the registered voters who reside in the area proposed to be annexed voting in a referendum on the annexation.

(c) The municipality has received a petition for annexation from more than 50 percent of the property owners within the area proposed to be annexed.

(2) For all or a portion of an enclave consisting of more than 20 acres within a designated municipal service area, the interlocal service boundary agreement may provide a flexible process for securing the consent of the registered voters who reside in the area proposed to be annexed and property owners for annexation of the property, with notice to the registered voters who reside in the area proposed to be annexed and property owners as required in the interlocal service boundary agreement. Such an annexation process may include one or more of the procedures in subsection (1) and may allow annexation when the municipality has received a petition for annexation from one or more property owners who own real property in excess of 50 percent of the total real property within the area to be annexed.

(3) For all or a portion of an enclave, consisting of 20 acres or less and with fewer than 100 registered voters within a designated municipal service area, the interlocal service boundary agreement may provide a flexible process for securing the consent of the registered voters who reside in the area proposed to be annexed and property owners for annexation of property within a municipal service area, with notice to the registered voters who reside in the area

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

proposed to be annexed and property owners as required in the interlocal service boundary agreement. Such an annexation process may include one or more of the procedures in subsection (1) and may allow annexation according to the terms and conditions provided in the interlocal service boundary agreement, which may include a referendum of the registered voters who reside in the area proposed to be annexed.

171.206 Effect of interlocal service boundary area agreement on annexations.--

(1) An interlocal service boundary agreement is binding on the parties to the agreement, and a party may not take any action that violates the interlocal service boundary agreement.

(2) Notwithstanding part I, without consent of the county and the affected municipality by resolution, a county or an invited municipality may not take any action that violates the interlocal service boundary agreement.

(3) If the independent special district does not consent to the interlocal service boundary agreement, it may seek compensation under s. 171.093.

171.207 Transfer of powers.--This part is an alternative provision otherwise provided by law, as authorized in s. 4, Art. VIII of the State Constitution, for any transfer of power resulting from an interlocal service boundary agreement for the provision of services or the acquisition of public facilities entered into by a county, municipality, independent special district, or other entity created pursuant to law.

171.208 Municipal extraterritorial power.--This part authorizes a municipality to exercise extraterritorial powers that include, but are not limited to, the authority to provide

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

services and facilities within the unincorporated area or within the territory of another municipality as provided within an interlocal service boundary agreement. This power is in addition to other municipal powers that otherwise exist.

171.209 County incorporated area power.--As provided in an interlocal service boundary agreement, this part authorizes a county to exercise powers within a municipality that include, but are not limited to, the authority to provide services and facilities within the territory of a municipality. This power is in addition to other county powers that otherwise exist.

171.21 Effect of part on interlocal agreement and county charter.--A joint planning agreement, a charter provision adopted under s. 171.044(4), or any other interlocal agreement between a county and a municipality is not affected by this part; however, the county or the municipality, or both, may avail themselves of this part, which may result in the repeal or modification of a joint planning agreement or other interlocal agreement.

171.211 Interlocal service boundary agreement presumed valid and binding.--

(1) If there is litigation over the terms, conditions, construction, or enforcement of an interlocal service boundary agreement, the agreement shall be presumed valid, and the challenger has the burden of proving its invalidity.

(2) Notwithstanding part I, it is the intent of this part to authorize a municipality to enter into an interlocal service boundary agreement that enhances, restricts, or precludes annexations during the term of the agreement.

171.212 Disputes regarding construction and effect of an interlocal service boundary agreement.--If there is a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

question or dispute about the construction or effect of an interlocal service boundary agreement, a local government shall initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the local government may file an action in circuit court. For purposes of this section, the term "local government" means a party to the interlocal service boundary agreement.

171.213 Citizen petition initiative process for enclaves.--

(1) If an interlocal agreement is not approved by the participating local governments, the registered voters or the property owners within an enclave that was identified in the requesting resolution by the initiating local government or in a responding resolution by a participating local government may petition a municipality for annexation or to initiate the interlocal agreement process for their specific area.

(2) This section does not apply to any municipality having a population of 7,500 or fewer as of January 1, 2003, unless approved by a majority of the governing board of the municipality. This section does not apply to any municipality having a population greater than 7,500 as of January 1, 2003, if the proposed area to be annexed will increase the municipal population by more than 10 percent, unless approved by a majority of the governing board of the municipality. In the event that a municipality is petitioned under this section on two or more occasions, the total of the proposed area to be annexed may not increase the municipal population by more than 20 percent in any given year or 50 percent in a 5-year period,

unless approved by a majority of the governing body of the municipality.

(a) The registered voters or the property owners within the area may initiate the petition no sooner than 270 days after the joint public hearing required in s. 171.203(8). The registered voters or the property owners of the area may initiate the interlocal agreement process by notifying a municipality of one of the following:

1. They have obtained the consent of 50 percent or more of the registered voters who reside in the enclave;

2. They have obtained the consent of 50 percent of the property owners within the enclave;

3. The board of directors of a condominium association as defined in s. 718.103(2) has approved a resolution and the resolution has been approved by a majority of the members of the condominium association located within the enclave; or

4. The board of directors of a homeowners' association as defined in s. 720.301(7) has approved a resolution and the resolution has been approved by a majority of the members of the homeowners' association located within the enclave.

(b) Each registered voter or property owner signing a petition shall sign in ink or indelible pencil his or her name as registered in the office of the supervisor of elections or the property appraiser. Each petition shall contain appropriate lines for the signature, printed name, and street address of the signee and an oath, to be executed by a witness thereof, verifying the fact that the witness saw each person sign the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

(c) Copies of the petition or resolution shall be submitted to the clerk of the municipality. If it is determined that the petition does not meet the requirements in this subsection, the clerk shall so certify to the governing body of the municipality and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition may not be used in any other proceeding.

(d) If it is determined that the petition has met the requirements of this subsection, the clerk shall so certify to the governing body of the municipality. Upon certification, a municipality must notify the registered voters, property owners, condominium association, or homeowners' association within 30 days after the certification of the petition.

(e) Not later than 60 days after the certification of the petition initiative from the proposed area, a municipality shall notify the county of its intent to initiate annexation procedures established in s. 171.205(1). If it elects not to annex, a municipality shall notify and invite the county and any independent special district pursuant to the interlocal agreement process established in s. 171.205 to address issues related to the annexation of the enclave. If the municipality fails to initiate annexation or the interlocal agreement process within 60 days, the registered voters, property owners, condominium association, or homeowners' association may petition the county to initiate the interlocal agreement process for the enclave.

(f) If the participating local governments fail to reach an agreement, the board of directors of a condominium association or homeowners' association within the proposed

area may request a dispute resolution process that provides for an orderly, speedy, and final resolution of the dispute.

(3) The local governments may adopt an interlocal dispute resolution agreement that provides a dispute resolution process. If the local governments do not adopt an interlocal dispute resolution agreement, they must use the following dispute resolution process:

(a) A county, municipality, condominium association, or homeowners' association may file a petition seeking arbitration that states with particularity the issue in dispute, suggests a proposed resolution, and states the reasons supporting the resolution.

(b) Notwithstanding s. 120.569, the petition shall be filed with the Division of Administrative Hearings, which shall, immediately upon filing, forward copies to the other local government that is a party. Within 10 days after receiving a complete petition, the division director shall assign an administrative law judge as arbitrator, who shall conduct an arbitration hearing within 90 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown.

(c) Within 90 days after the arbitration hearing, the arbitrator shall issue a written decision and state the reasons for the decision in writing. The division shall immediately transmit a copy of the decision to the county, the municipality, and any independent special district.

(d) The evidentiary standards shall be as provided in ss. 120.569(2)(g) and 120.57(1)(c).

(e) This subsection does not preclude settlement by mutual agreement of the parties at any time.

(f) The arbitrator shall consider the following factors:

1. The preference of the residents and property owners in the enclave proposed for annexation.

2. The fiscal effects of boundary adjustments, including the effect of the annexation of the enclave on the ability of the county, the municipality, and any independent special district to provide services and facilities to the area proposed to be annexed, the remainder of the unincorporated area, and the incorporated area of the municipality.

3. The current level-of-service standards of the infrastructure and the potential fiscal impact on the municipality which may result from annexation of the enclave.

4. The reduction in the value or use of infrastructure owned by the county or an independent special district that may result from annexation of the enclave.

5. The commonality of interests among the residents and property owners of the enclave proposed for annexation and the adjacent incorporated area.

6. The effects of the proposed annexation on the efficiency and effectiveness of urban service delivery.

7. Whether the area proposed for annexation meets the criteria in s. 171.031(13).

8. The intent of the Legislature as expressed in this part.

(g) The arbitrator shall:

1. Determine whether the enclave should remain unincorporated or be annexed. If the arbitrator finds that the enclave should be annexed, the annexation must be approved by a majority of the registered voters who reside in the enclave.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. Determine service delivery responsibilities of the county, municipality, and any independent special district.

3. Determine fiscal compensation issues, including requiring a single payment or payment over a term of years by one of the parties to ensure that fiscal responsibilities for providing urban services can be met.

(h) Arbitration hearings shall be conducted as provided by ss. 120.569 and 120.57, except that the arbitrator's order shall be transmitted to the governmental entities, which have 45 days to:

1. Accept the findings and enter into an agreement based upon the award;

2. Negotiate and enter into an agreement that differs from the award; or

3. File an action rejecting the award under s. 684.22 to set aside the award or enforce it.

All subsequent proceedings shall be governed by part III of chapter 684.

(i) The Division of Administrative Hearings may adopt rules for arbitration.

Section 2. Subsection (2) of section 171.042, Florida Statutes, is amended to read:

171.042 Prerequisites to annexation.--

(2) Not fewer than 15 days prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located. The notice provision provided in this subsection may be the basis for a cause of action invalidating the annexation.

Section 3. Subsection (6) of section 171.044, Florida Statutes, is amended to read:

171.044 Voluntary annexation.--

(6) Not fewer than 10 days prior to ~~Upon~~ publishing or posting the ordinance notice required under subsection (2), the governing body of the municipality must provide a copy of the notice, via certified mail, to the board of the county commissioners of the county wherein the municipality is located. The notice provision provided in this subsection may ~~shall not~~ be the basis for a ~~of any~~ cause of action invalidating ~~challenging~~ the annexation.

Section 4. Section 171.094, Florida Statutes, is created to read:

171.094 Effect of interlocal service boundary agreements adopted under part II on annexations under this part.

(1) An interlocal service boundary agreement entered into pursuant to part II is binding on the parties to the agreement and a party may not take any action that violates the interlocal service boundary agreement.

(2) Notwithstanding any other provision of this part, without consent of the county and the affected municipality by resolution, a county or an invited municipality may not take any action that violates an interlocal service boundary agreement.

Section 5. Section 171.081, Florida Statutes, is amended to read:

171.081 Appeal on annexation or contraction.--

(1) ~~No later than 30 days following the passage of an annexation or contraction ordinance,~~ Any party affected who believes that he or she will suffer material injury by reason

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. The action may be initiated at the party's option either within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this section, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees.

(2) If the affected party is a governmental entity, no later than 30 days following the passage of an annexation or contraction ordinance, the governmental entity must initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the governmental entity that initiated the conflict resolution procedures may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari.

Section 6. Section 164.1058, Florida Statutes, is amended to read:

164.1058 Penalty.--If a primary conflicting governmental entity ~~which has received notice of intent to initiate the conflict resolution procedure pursuant to this act~~ fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

in this act, ~~and the initiating governmental entity files suit and is the prevailing party in such suit,~~ the primary disputing governmental entity that ~~which~~ failed to participate in good faith shall be required to pay the attorney's fees and costs in that proceeding of the prevailing primary conflicting governmental entity ~~which initiated the conflict resolution procedure~~.

Section 7. The Division of Statutory Revision is requested to designate sections 171.011-171.094, Florida Statutes, as part I of chapter 171, Florida Statutes, and sections 171.20-171.213, Florida Statutes, as created by this act, as part II of chapter 171, Florida Statutes.

Section 8. This act shall take effect July 1, 2004.

3

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2362

SPONSOR: Senator Geller

SUBJECT: Annexation

DATE: April 14, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	
2.			GO	
3.			ATD	
4.			AP	
5.			RC	
6.				

I. Summary:

The bill expresses legislative intent to revise laws relating to annexation.

II. Present Situation:

The "Municipal Annexation or Contraction Act," ch. 171, F.S., codifies the State's annexation procedures and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.[1] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[2]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annex area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation may also be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

Annexation Procedures

[1] S. 171.021, F.S.

[2] Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, Oct. 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.

Chapter 171, F.S., is intended to provide for efficient service delivery and to limit annexation to urban service areas. Florida's annexation policy attempts to accomplish these goals through restrictions aimed at preventing irregular municipal boundaries. Four parties to any annexation include the state, the municipality that is annexing the property, those property owners who remain in the unincorporated area along with the local government that represents them, and finally those property owners in the area that is the subject of the annexation. Current annexation procedures provide the most process for landowners in the proposed annex area.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[3] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminus with the municipality's boundary.[4] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket, or fingers in serpentine patterns.[5]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipalities' Future Land Use Map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[6] In the interim, a city must apply county regulations or wait to apply its own rules.

As far as revenues are concerned, the effective date of the annexation determines who receives funds. The county share of revenue sharing and the half-cent sales tax will be reduced, effective July 1 if a parcel is annexed prior to April 1. Should the annexation occur before a city levies millage, the annexed property is subject to the city millage, but excluded from the MSTU. If a county has not levied its non-ad valorem assessments before annexation, the county loses those assessments. This structure for revenues does not allow for any transition period for local governments financially impacted by a recent annexation.

Article VIII, section (2)(c) of the State Constitution provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal agreement, voluntary annexation, or involuntary annexation. First, annexation may be accomplished by a special act of the Legislature pursuant to Article VIII, section (2)(c) of the State Constitution. Annexation through a special act must meet the notice and referendum requirements of Article III, section 10 of the State Constitution applicable to all special acts.

Cities may annex enclaves by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves can also be annexed by municipal ordinance when there are fewer

[3] Ss. 171.0413-.043, F.S.
[4] S. 171.031(11), F.S.
[5] S. 171.031(12), F.S.
[6] 1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs, No. 4D01-2320 (Fla. 4th DCA Aug. 28, 2002).

than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum. In a similar process, s. 163.3171, F.S., allows for a joint planning agreement between a municipality and county to allow annexation of unincorporated areas adjacent to a municipality.

Section 171.044, F.S., provides the procedures for a voluntary annexation which occurs when 100 percent of the landowners in an area proposed to be annexed petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[7] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[8]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. A majority of the property owners must consent when more than 70 percent of the property in a proposed annex area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed as well as adopt an ordinance allowing for the annexation and meet certain notice requirements. The urban services report does not have to provide a lot of detail.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of 4 years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property. Following the 4 years and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

III. Effect of Proposed Changes:

Section 1 of the bill expresses legislative intent to revise laws relating to annexation.

Section 2 provides the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[7] S. 171.044(4), F.S.
[8] *See id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

4

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 3072

SPONSOR: Senator Constantine

SUBJECT: Interlocal Svc. Boundary Agreement

DATE: April 14, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Lang	JU	Favorable
2.	Herrin RMH	Yeatman	CP	
3.				
4.				
5.				
6.				

I. Summary:

The bill creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide a process by which counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas of a county or to areas of a municipality and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

The bill also increases the amount of time required under existing law between the adoption of a municipal ordinance proposing annexation and the referendum on annexation from at least 30 to at least 60 days. Lastly, the bill provides that a municipality that proposes to annex an unincorporated area of a county must notify the county of its intent 30 days before commencing annexation procedures under s. 171.043, F.S.

This bill creates part II of chapter 171, Florida Statutes, consisting of sections 171.20-171.23, and also creates section 171.094 and amends ss. 171.0413 and 171.042 of the Florida Statutes.

II. Present Situation:

Interlocal Agreements

The conditions under which a county or municipality may contract with each other to provide services are specified in Art. 8, s. 4, Fla. Const. It states:

> By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or

special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Section 163.01, F.S., creates the "Florida Interlocal Cooperation Act of 1969" (act) to permit local governments to cooperate with each other to efficiently exercise their powers to provide services and facilities for their communities.[1] Under the act, local governments may enter into interlocal agreements with each other to exercise any power, privilege, or authority that the local governments have in common.[2] The functions that may be exercised under an interlocal agreement authorized by the act expressly include the construction and operation of water and wastewater facilities and power plants.[3] Additionally, municipalities may enter into interlocal agreements with each other for law enforcement services.[4]

Annexation

Section 174.0143, F.S., establishes a uniform method for a municipality to annex unincorporated areas of a county. Areas that may be annexed are generally limited to territory that is contiguous to the boundaries of the municipality, compact, and of urban character. The annexation of compact territory will not create enclaves of unincorporated territory surrounded by the municipality or finger areas in serpentine patterns.[5]

The process for annexation initiated by a municipality begins with at least two advertised public hearings on a proposal to annex an unincorporated area.[6] Then the municipality must adopt an ordinance proposing to annex the area. The ordinance proposing annexation does not become final until the approval of a referendum on annexation by the registered voters in the area proposed for annexation. The municipality must publish a notice of the referendum at lease once a week for 2 consecutive weeks in a newspaper serving the affected area.[7] The referendum must be held at least 30 days after the adoption of the ordinance proposing the annexation.[8]

If more than 70 percent of the area proposed for annexation is owned by people who are not registered to vote in the area or if there are no registered voters in the area, the area may not be annexed unless the owners of more than 50 percent of the area consent to the annexation.[9]

Enclaves of unincorporated areas of 10 acres or less surrounded by a municipality may be annexed by an interlocal agreement with the county.[10] If fewer than 25 registered voters reside in the enclave, the enclave may be annexed after a referendum on annexation approved by at least 60 percent of the registered voters who reside in the area.

[1] Section 163.01(2), F.S.
[2] Section 163.01(4) and (5), F.S.
[3] Section 163.01(7)(g) and (15), F.S.
[4] Section 166.0495, F.S.
[5] Section 171.0413 and s. 171.031(12), F.S.
[6] Section 171.0413(1), F.S.
[7] Section 171.0413(2)(b), F.S.
[8] Section 171.0413(1)(a), F.S
[9] Section 171.0413(5) and (6), F.S.
[10] Section 171.046, F.S.

III. Effect of Proposed Changes:

Interlocal Service Boundary Agreements
The bill creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide a process by which counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas in a county or areas of a municipality and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

Interlocal Service Boundary Agreement Defined
The bill provides that an interlocal service boundary agreement is an agreement that addresses certain issues between a county and one or more municipalities within the county and may include special districts. The issues that may be addressed by the agreement may include, but are not limited to, the identification of the local government responsible in specified unincorporated areas for the delivery or funding of public safety; fire service; water and wastewater services; road maintenance; parks and recreation; storm water management and drainage. Additionally, the agreement may establish a process and schedule for the annexation of areas within a municipal service area and include provisions for joint use of facilities and the collocation of services.

Initiation of Negotiations
The bill provides that the negotiations for an interlocal service boundary agreement are initiated when a county or municipality adopts a resolution inviting at least one other local government to enter into negotiations. The bill provides that once negotiations are initiated, the local governments must negotiate in good faith for an interlocal service boundary agreement but, the local governments are not required to reach an agreement. As such, the bill permits a local government to force another local government to negotiate to resolve issues that may be the subject of an interlocal service boundary agreement.

An initiating resolution must identify an unincorporated area to be discussed and the issues to be negotiated. If a county initiates the negotiation process, the resolution must then be distributed to the municipalities invited and all of the other municipalities and special districts in the county. If a municipality initiates the negotiation process, the resolution must be distributed to the county invited and all of the other municipalities and special districts in the county.

An invited local government must adopt a responding resolution within 60 days of its receipt of the resolution inviting the local government to enter into negotiations. The responding resolution may identify an additional unincorporated area and additional issues for discussion. The responding resolution may also invite an additional municipality to negotiate an interlocal service boundary agreement.

Independent special districts may participate in the negotiations by adopting a resolution stating their intent to participate and sending the resolution to the local government that initiated negotiations and the invited local governments. Municipalities that were not invited to the negotiations may adopt a resolution requesting to participate. The county and invited municipalities may adopt a resolution allowing the requesting municipality to participate in the

negotiations. If an agreement is reached, the participating parties must adopt the agreement by ordinance, rule, order, or other appropriate method.

Impasse in Negotiation

If after six months after negotiations have commenced an interlocal service boundary agreement has not been reached, the initiating or invited local governments may declare an impasse in the negotiations. The party declaring an impasse may seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. These conflict resolution procedures include: a conflict assessment meeting; a joint public meeting, either of which may be assisted by a facilitator; and mediation. If the negotiations ultimately fail to lead to an agreement, the initiating local government may not initiate negotiations to require the invited local government to negotiate the same issues with respect to the same unincorporated areas for three years.

Annexation

The bill provides procedures under which land identified in interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171. F.S. Specifically, the bill authorizes a municipality to annex land that: is not contiguous to the municipality; is not urban in character; creates an enclave; and is not compact. The land that may be annexed under the agreement, may be annexed by the municipality upon the filing of a petition for annexation signed by more than 50 percent of the registered voters of the area or 50 percent of the property owners in the area or upon the approval of a referendum on annexation by the registered voters in the areas proposed for annexation. Unlike the annexation procedures in s. 171.0413(1), and (2), F.S., the bill does not require a municipality to notify the public of the referendum on annexation or to hold public hearings on the proposed annexation.

Enforcement

The bill provides that local governments must first attempt to resolve disputes arising out of an interlocal service boundary agreement through the conflict resolution procedures in ch. 164, F.S., before initiating an action in circuit court.

The bill provides that municipalities that participated in the negotiation of an interlocal service boundary agreement after a request to participate was approved by the initiating and invited local governments are bound by the agreement regardless of whether the participating municipalities consented to the agreement. Such municipalities are prohibited by the bill from taking any action that would violate the agreement. If a municipality does not consent to an agreement, the bill does not explain why or how such a municipality would be a party to the agreement or whether obligations may be imposed on the non-consenting municipality by the parties to the agreement. If a municipality is not a party to an agreement, the bill does not state how a municipality could violate an agreement.

The bill additionally provides that an independent special district that participates in the negotiations may seek compensation under s. 171.093, F.S., if it does not consent to the agreement.

Annexation of Land not Designated for Annexation Under an Interlocal Agreement
The bill increases the amount of time required under existing law between the adoption of a municipal ordinance proposing annexation and the referendum on annexation from at least 30 to at least 60 days.

The bill specifies that a municipality proposing to annex an unincorporated area of a county must notify the county of its intent 30 days before commencing annexation procedures under s. 171.043, F.S. Existing law only requires notice to be provided to the county *prior* to the commencement of the annexation procedures. The bill provides that failure to comply with the notice provision is the basis for a cause of action to invalidate the annexation. Because the bill specifies that the notice must be provided "thirty days" prior to the commencement of annexation procedures, a notice provided more than 30 days before the commencement is arguably not in compliance with the notice required by the bill. The Legislature may wish to amend the bill to specify that a municipality must provide notice *at least* 30 days prior to the commencement of annexation procedures.

The bill specifies that notice must be provided by a municipality proposing annexation to the residents of the area proposed for annexation. Notice of proposed annexation, however, is already required under existing law through advertised public hearings and through notices published in a newspaper at least once a week for two consecutive weeks immediately preceding the date of the referendum. As such, the bill is unclear as to whether some additional type of notice to the residents of an area proposed for annexation is required.

Effective Date
The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The interlocal service boundary agreements authorized by the bill may permit more efficient delivery of services and facilities to residents living in unincorporated areas of a county. Additionally, the bill facilitates the annexation of unincorporated areas designated for annexation by a municipality in an interlocal service boundary agreement subjecting the residents of those areas to different regulations and taxes.

C. Government Sector Impact:

Counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas in a county and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

VI. Technical Deficiencies:

Section 171.302, F.S., created by the bill states that local governments in negotiations for an interlocal service boundary agreement may provide a process for public participation that "meets or exceeds the requirements of subsection (7) . . . or this section." No process for public participation is provided in s. 171.302, F.S., except for a joint public hearing after the failure of negotiations.

On page 8, line 1, the word "*whether*" should be replaced with *that*.

On page 10, line 14, the cross reference to "s. *164.1053, F.S.,*" should probably be replaced with s. *164.1052, F.S.,* in order to include all of the provisions related to the conflict resolution procedures in ch. 164, F.S.

On page 14, lines 5-7, the bill should be clarified to provide that the independent special district is an independent special district that requested to participate in the negotiations for the interlocal service boundary agreement.

VII. Related Issues:

None.

VIII. Amendments:

None.

5

At the time of the printing of this packet, SB 1652 by Senator Wise has not been received by this committee.